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**U.S. Citizenship
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FILE: [REDACTED]
MSC-06-004-11346

Office: NEW YORK

Date: **APR 11 2008**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the District Director, New York. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, counsel for the applicant stated that the director should have been more liberal in accepting evidence that is more than 25 years old, because of the fact that individuals have died or disappeared and because of the difficulty of obtaining documents after the passage of time.

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term “until the date of filing” in 8 C.F.R. § 245a.2(b)(1) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant's claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* at 80. Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States for the duration of the requisite period. Here, the applicant has not met his burden of proof.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on October 4, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed only [REDACTED] White Plain, New York from July 1981 to April 1990 during the requisite period. At part #31 where applicants were asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, et cetera, the applicant listed Bronx Hindu Temple from January 1982 to 1988; and [REDACTED], DC from October 1986 to May 1988. At part #32 where applicants were asked to list all absences from the United States since entry, the applicant listed only the following trips to Trinidad to visit family: July 14, 1982 to August 23, 1982; September 19, 1987 to October 30, 1987; and November 1, 1988 to December 6, 1988. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed only self-employment as a vendor from 1981 to 1994 during the requisite period.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided multiple documents. The applicant provided a Notice to Tenant, with an envelope addressed to the applicant and dated January 14, 1991. This document does not relate to the requisite period.

The applicant provided a statement dated November 9, 1986 listing multiple visits to [REDACTED], for spinal adjustments. The visits occurred approximately once every two weeks from October 31, 1986 to May 27, 1988. This document is found to be internally inconsistent. Specifically, the document is dated November 9, 1986 yet confirms visits that occurred from one month prior to that date until nearly two years into the future. This inconsistency calls into question the credibility of this document and, as a result, casts doubt on the applicant's claim to have resided in the United States during the requisite period.

The applicant provided a copy of a Form I-94 Departure Record listing his name and indicating he was admitted to the United States at New York, New York as a B-2 nonimmigrant visitor on December 31, 1989. This information is inconsistent with the applicant's statements on his Form I-687, where he failed to list an absence from the United States ending on December 31, 1989. This inconsistency casts doubt on the applicant's claim to have resided in the United States throughout the requisite period. The inconsistency, together with the copy of the applicant's Form I-94, also suggests the possibility that the applicant may have been absent for a lengthy portion of the requisite period or may have first entered the United States on December 31, 1989, rather than in July 1981 as he indicated on his Form I-687 application.

The applicant provided receipts from I.E.D. Dept. Store in the Bronx, which list the applicant's name and the [REDACTED] address and are dated June 21, 1982 and May 10, 1988. The first receipt constitutes some evidence that the applicant resided in the United States during the time immediately surrounding June 21, 1982. The date of the second receipt falls outside of the requisite period. The applicant also provided a receipt that lists no company name and lists the applicant's name and the [REDACTED] address. This receipt is dated August 10, 1984. This document contains no company name or contact information and, therefore, is unverifiable. As a result, it constitutes only limited evidence that the applicant resided in the United States during the period immediately surrounding August 10, 1984.

The applicant provided original handwritten correspondence between the applicant and an individual from Republic Bank. This document fails to list the applicant's address and, therefore, fails to confirm that he resided in the United States during the requisite period.

The applicant provided photocopies of two lease documents covering the period from May 4, 1982 to May 1, 1988. Both documents list the applicant as tenant of the [REDACTED] address. The signature pages of the documents contain spaces for signatures of the tenant, the landlord, and a witness. The spaces for the witnesses' signatures are blank. This casts doubt on the authenticity of the lease documents and, as a result, calls into question the applicant's claim to have resided in the United States during the requisite period.

The applicant provided multiple attestations in support of his claim to have resided in the United States throughout the requisite period. The applicant submitted a notarized declaration from [REDACTED]. This declaration states that the declarant met the applicant in the early part of 1982 in New York City. The declarant stated that he and the applicant crossed the border from Buffalo to Toronto by car on September 19, 1987. The applicant and the declarant were passengers in a car, and the driver did not want to identify himself. The applicant traveled from Toronto to Trinidad by plane. The applicant returned to the United States on October 30, 1987 to resume residence and employment. This declaration merely states that the applicant was present in the United States in early 1982 and that he resided in the United States during the time immediately surrounding September and October 1987. In addition, this declaration fails to provide detail regarding how the declarant met the applicant, their frequency of contact during the requisite period, and whether the applicant was absent from the United States at any other time than September and October 1987. As a result, this declaration is found to lack sufficient detail to confirm that the applicant resided in the United States during the time surrounding September and October 1987.

The applicant submitted a form affidavit from [REDACTED], which states that the applicant lived at the [REDACTED] address with the affiant from July 1981 to April 1990. The affiant stated that the rent receipts and household bills were in the affiant's name, and the applicant contributed to the payment of rent and household bills. The applicant failed to attach supporting documents, including copies of bills in the affiant's name issued during the requisite period. In addition, the information provided by the affiant is inconsistent with the copies of lease documents provided by the applicant, which both list the applicant, and not the affiant, as the tenant of the [REDACTED] address. This inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period. Lastly, this affidavit fails to include detail regarding when and how the affiant met the applicant, how they came to reside together, and whether the applicant was absent from the United States during the requisite period. As a result, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant provided a form affidavit from [REDACTED], which states that the applicant resided at the [REDACTED] address from July 1981 to April 1990. This affidavit also fails to include detail regarding when and how the affiant met the applicant, their frequency of contact during the requisite period, and whether the applicant was absent from the United States during the requisite period. As a result, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant provided a form affidavit from [REDACTED] dated April 3, 1991, which states that, to the affiant's personal knowledge, the applicant resided at the [REDACTED] address from July 1981 to April 1990. The affiant also stated that he has known the affiant for over seven years. This affidavit is found to be internally inconsistent, since the affiant both confirms the applicant's residence in the United States since nearly ten years prior to the date the affidavit was written, and also states he has known the applicant for more than seven years. This inconsistency casts some doubt on whether the affiant can confirm the applicant's residence throughout the

requisite period. This affidavit also fails to include detail regarding when and how the affiant met the applicant, and whether the applicant was absent from the United States during the requisite period. As a result, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant provided a form affidavit from [REDACTED], which states that the applicant resided at the [REDACTED] address from July 1981 to April 1990. This affidavit also fails to include detail regarding when and how the affiant met the applicant, their frequency of contact during the requisite period, and whether the applicant was absent from the United States during the requisite period. As a result, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant provided a form affidavit from [REDACTED], which states that the applicant resided at the [REDACTED] address from July 1981 to April 1990. This affidavit also fails to include detail regarding when and how the affiant met the applicant, their frequency of contact during the requisite period, and whether the applicant was absent from the United States during the requisite period. As a result, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant submitted a declaration from [REDACTED] of Bronx Hindu Temple, which states that the applicant, "of [REDACTED] Bronx . . . has been attending this temple since January 1982 to the later part of 1988." This declaration does not conform to regulatory standards for attestations by churches, unions, or other organizations as stated in 8 C.F.R. § 245a.2(d)(3)(v). Specifically, the declaration does not establish how the author knows the applicant and does not establish the origin of the information being attested to.

In denying the application the director noted that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal, counsel for the applicant stated that the director should have been more liberal in accepting evidence that is more than 25 years old, because of the fact that individuals have died or disappeared and because of the difficulty of obtaining documents after the passage of time.

In summary, the applicant has provided documents that do not relate to the requisite period, are internally inconsistent, are inconsistent with the applicant's Form I-687, fail to confirm that the applicant resided in the United States during the requisite period, or have questionable authenticity. The applicant provided attestations that lack sufficient detail or do not conform to regulatory standards. The declarations from [REDACTED], [REDACTED], and [REDACTED] lack sufficient detail. The declaration from [REDACTED] does not conform to regulatory standards. The applicant provided credible and verifiable evidence of residence in the United States only for the period immediately surrounding June 21, 1982.

The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the contradictions between the applicant's statements on his Form I-687 and the other documents he provided, as well as the inconsistencies within his supporting documents, and given his reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite period under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

It is noted that, on July 19, 1994, the applicant was granted voluntary departure from the United States until August 19, 1994.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.